From Lord Avebury

May 27, 1990

Dear Senator Evans,

Thanks for your letter of May 11 about the problem of East Timor. I am very much obliged to you for the trouble you have taken and the careful thought you gave to the points I raised, and would be even further indebted to you if you would consider some additional thoughts which occur to me on reading your letter.

First. the United Nations Charter does not make any distinction between the acquisition by force of self-governing and non self-governing territories. Article 2 paragraph 4 of the Charter forbids the use or threat of force against the territorial integrity or political independence of any state, and Indonesia's invasion of East Timor violated the territorial integrity of Portugal, the power which de jure controlled East Timor at the time.

If your argument is that a state may invade and permanently occupy a territory which is under 'colonial and alien domination' (to use a phrase which recurs in many UN resolutions), I would respectfully suggest that such a proposition is fraught with danger. For instance, it could be held to justify a Pakistani invasion of Indian-occupied Kashmir, to take a topical example. There are many territories in which the inhabitants consider themselves to be under 'colonial and alien domination': not only the Baltic Republics but Moldavia, which was similarly annexed by the Soviet Union as a result of the Molotov-Ribbentrop pact; Georgia, Ukraine, Azerbaijan, Armenia, Tadjikstan, etc. In the People's Republic of China, the Tibetans and Uigurs are demanding self-determination. In India, the Sikhs of the Punjab as well as the Kashmiris want separation, and in Indonesia itself, West Papuans and Achehnese consider themselves to be under colonial rule. In all these territories (and others in Africa which I could have enumerated), the prohibition on the use of force would be of no effect if you say that it is limited to those entities which have the attributes of statehood.

Secondly, on the acquisition of valid title, where a territory was forcibly annexed, by virtue of the lapse of time: the Lithuanians in particular are arguing that it is not necessary for them to declare independence, but merely to reaffirm their separate existence as a state, which they say was not forfeited as a result of their unlawful occupation in 1940. The right of prescription did not apply in the case of Lithuania, any more than it does for East Timor, because the exercise of authority must be undisturbed and not protested against by the state against which it is exercised. The period of time which must elapse before title is acquired by prescription is indeed not fixed by international law, and the UK did argue that title to the Falklands had been acquired by prescription, there having been a long period in the nineteenth century during which our sovereignty over the islands was not challenged by Argentina. As you know, the Portuguese have continuously challenged Indonesia's right to occupy East Timor, and this is the very reason why the task of resolving the future of the territory has been placed in the hands of the Secretary-General by the General Assembly of the United Nations.

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You mention the case of Western Sahara. As you know, the Secretary-General is involved in that case as well, and I am hopeful that in due course he will make arrangements for a referendum in the territory, enabling the people to determine their own political future, in accordance with the principles of Resolutions 1514 and 1541 of 1960, and of Article 1 of the United Nations Covenant on Civil and Political Rights - of which Australia is of course a signatory.

You also mention the case of West Papua. The United Nations violated their own principles by handing that territory over to Indonesia without any test of the opinion of the people, and we shall have to return to that matter on another occasion. Yesterday I returned from an international conference on Peace in Asia and the status of Tibet, at which a resolution was passed unanimously, reaffirming the Tibetan people's right of self-determination. I think you will find that recent events in eastern Europe and Namibia; the advent of majority rule in South Africa in the medium term future, and the proximate attainment of their liberation by the people of Eritrea have all helped to create a new climate, in which the aspirations of subject peoples cannot be so easily denied. In the words of that great American statesman Woodrow Wilson:

> *National aspirations must be respected, peoples may now be dominated and governed only by their consent. Self-determination is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril.*

Yours sincerely,

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